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Chairman: Mr. Ali ..... (Malaysia)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Saha

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The meeting was called to order at 10.10 a.m.

Agenda item 137: Administration of justice at the United Nations (A/61/891 and A/61/936; A/62/7/Add.7, A/62/179, A/62/294 and A/62/311)

1. **Ms. Bárcena** (Under-Secretary-General for Management) recalled that the General Assembly, in its resolution 61/261, had decided that a new internal system of justice should be established by January 2009. The potential positive impact of that ground breaking reform on the Organization's most important resource, the 60,000 staff serving in the Secretariat, funds and programmes, 52 per cent of whom were in the field, was tremendous.

2. The motivation for the complete overhaul proposed by the General Assembly lay in the findings of the Redesign Panel on the United Nations System of Administration of Justice, established at its own request. In its report (A/61/205, of 28 July 2006), the Redesign Panel had deemed the current system outmoded, dysfunctional and ineffective, citing its reliance on unpaid volunteers, its protracted delays and its unsatisfactory decisions.

3. Subsequently, the Secretary-General had embarked on comprehensive negotiations with management and staff in the Secretariat, funds and programmes, including the representatives of 12 different unions and staff associations, and had presented the results of those negotiations in his note regarding the report of the Redesign Panel (A/61/758, of 23 February 2007).

4. The General Assembly had recognized that today's United Nations was a complex, multifaceted entity with large numbers of staff dispersed across multiple locations and functions, very different from the Headquarters-based organization of a few thousand staff for which the existing system of justice had been designed in the late 1940s. Incremental patching of the old system would not suffice.

5. Addressing specific requests contained in resolution 61/261, the Secretariat had prepared further reports for the consideration of the General Assembly. The report of the Secretary-General on revised estimates relating to the programme budget for the biennium 2006-2007 and the proposed programme budget for the biennium 2008-2009 (A/61/891), which the General Assembly had not had time to consider at its sixty-first session, described the additional resources requested to ensure continued operation of the existing system, clearing the case backlog and preparing the way for the new system. The report of the Secretary-General on the administration of justice (A/62/294), meanwhile, provided additional information on the redesign of the internal system of justice and laid out the resource requirements of the new system.

6. After recalling the wish expressed by the General Assembly in resolution 61/261 that the new system should be independent, transparent, professionalized, adequately resourced and decentralized, she said that the system proposed by the Secretary-General had been discussed with staff representatives of United Nations personnel around the world, and that changing it, however incrementally, risked harming its integrity and adversely affecting the delivery of justice. It was particularly important not to replicate or exacerbate the weaknesses in the current system. It would have been preferable for the Advisory Committee to fully realize the rationale of the proposal.

7. Effective, swift, professional and independent justice came at a price. The resource requirements of the Secretary-General's proposal, based on the Redesign Panel's proposals and modified in the light of the two sessions of the Staff-Management Coordination Committee and the guidance provided by the General Assembly in resolution 61/261, would involve approximately $23.5 million in additional resources to be financed from the 2008-2009 regular budget and $811,000 to come from the peacekeeping support account. To staff the new system, the two reports in question requested 79 posts, to be funded from the regular budget, in addition to the 34 posts for the existing justice system, but those numbers were expected to fall by as much as one third once workable cost-sharing arrangements had been agreed with the United Nations funds and programmes. Peacekeeping operations would require 21 posts.

8. The new internal justice system, as described in document A/62/294, would depend on an informal system of dispute resolution, a new management evaluation capacity and a two-tier system of formal judicial review.

9. In the informal system, decentralization of the Office of the Ombudsman and the establishment of a Mediation Division would help staff and managers resolve their differences quickly and amicably in the

major duty stations and missions outside Headquarters, thereby reducing the number of cases going forward through the formal system, particularly since mediated agreements could not be further litigated. At the request of the staff and management of the United Nations funds and programmes, a proposal for the establishment of a small regional presence in Dakar to provide services to the many staff in the West African region had been added.

10. Effective and impartial management evaluation of every contested administrative decision would provide a final opportunity for the administration to correct its mistakes or reverse faulty decisions prior to judicial review. As a result, fewer cases would go to formal litigation. In addition, such evaluation, which was a feature of many national systems, constituted a crucial element in the Secretary-General's efforts to enhance managerial accountability. A similar system, adequately resourced, had proven extremely successful in UNDP, where almost 70 per cent of cases were resolved at the evaluation stage.

11. The formal system would consist of a two-tier judicial review, conducted by experienced, qualified judges. A first-instance Dispute Tribunal and an appellate instance, the Appeals Tribunal, would both issue binding decisions, in contrast to the non-binding advisory recommendations of the existing Joint Appeals Boards and Joint Disciplinary Committees. The Secretary-General's proposal that the Dispute Tribunal should consist of three panels of three judges was based on the need to preserve diversity to minimize any real or perceived bias towards a particular legal approach; the need to maximize accuracy, objectivity and fairness in the fact-finding role inherited from the Joint Appeals Boards and Joint Disciplinary Committees; the need to ensure, through deliberation, that judgements were well argued and properly substantiated; and the need to ensure the legitimacy of Dispute Tribunal decisions, in the light of the limited grounds for appeal to the Appeals Tribunal.

12. Aware that the credibility of the formal system would depend on the quality of the judges appointed to it, the Secretary-General fully supported a comprehensive vetting process for candidates. In addition, an enhanced, decentralized Office of Staff Legal Assistance should provide staff with a knowledgeable source of legal advice, in order to ensure that only valid complaints moved forward in the formal system and that both parties were placed on an equal footing in that system.

13. The highest-level staff-management consultative body at the disposal of the Secretary-General, the Staff-Management Coordination Committee (SMCC), had held two meetings in 2007 for consultation and agreement on all aspects of the redesign proposal. While the New York Staff Union had chosen not to participate in those meetings, despite repeated overtures from the senior management team, including the Secretary-General, it had expressed its agreement with the provisions of resolution 61/261.

14. **Ms. Analena** (Vice-President, Staff-Management Coordination Committee (SMCC)), speaking on behalf of the staff representative bodies at the Economic Commissions for Africa and for Latin America and the Caribbean; the Economic and Social Commissions for Asia and the Pacific and for Western Asia; the United Nations Offices at Geneva, Nairobi and Vienna; the field Staff Union; the International Criminal Tribunals for the Former Yugoslavia and for Rwanda; the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees and the United Nations University, welcomed the Member States' recognition that overhauling the internal system of justice was critical to the health of the Organization and the well-being of its staff.

15. The staff of the United Nations urged the General Assembly to ensure that the inspirational words of resolution 61/261 were translated into a tangible, functional system that positioned the Organization as an exemplary employer and acted as the cornerstone of much-needed organizational reform. One of the Redesign Panel's most scathing criticisms of the existing system had related to the disparity between the legal resources available to the management and those available to the staff. If adequately resourced, the proposed Office of Staff Legal Assistance would address the glaring inequity in the present system and promote efficiency by ensuring that only claims with merit and a prospect of success moved forward.

16. Apparently the use of less costly alternatives, such as outside counsel or an office staffed by a handful of junior officers, were false economies. First, most staff could not afford outside legal counsel because the internal system of justice, unlike many national legal systems, usually did not provide for the payment of attorney fees, and monetary awards were

not large enough for attorneys to take cases on a contingent-fee basis. Staff members would be forced to pay for legal counsel out of pocket, with little hope of recouping such expenses even if their claim was successful. Some staff would forgo counsel, while others would fall prey to unprincipled outside attorneys who took on cases in order to pursue their own political agendas rather than to assist the staff member. Second, if the Office of Staff Legal Assistance was staffed only by junior legal officers, the problem of inequity of representation would be perpetuated. Oversight from senior counsel would make that Office more efficient and ensure that it fulfilled the role envisioned in resolution 61/261.

17. As the General Assembly, in its resolution 61/261, had made independence central to the new internal justice system, SMCC had reached consensus on the need for a transparent appointment process for senior figures and strongly endorsed the proposed Internal Justice Council. All senior personnel in the new system must have the professional skills and qualifications necessary to perform their tasks, and all levels of staff should hold specific judicial and legal qualifications in administrative and employment law. The Internal Justice Council would play an important role in securing the best and the brightest talent for the new system.

18. The staff representatives fully concurred with the General Assembly and the Secretary-General that the provision must be made for informal dispute resolution. Informal mechanisms were pivotal in resolving disputes at an early stage and preventing recourse to the formal system. They encouraged managers to be accountable for their decisions and responsive to staff concerns, fostering better communication between staff and management.

19. While the informal system had the potential to reduce the workload of the formal system by as much as 75 per cent, it could do so only if it was adequately resourced and global in its reach. Internal dispute mechanisms must be available to all staff, irrespective of where they served. Staff serving away from Headquarters, who constituted the majority, must have the same rights and access as those at Headquarters. If the informal system remained principally Headquarters-based, it could not be expected to meaningfully diminish the workload of the formal system.

20. The staff urged the General Assembly to keep in mind the core principles of independence, transparency and decentralization when establishing the new internal system of justice, to avoid importing aspects of the demonstrably inefficient and unfair existing system, to reject false economies and to give the system the resources needed to signal a true departure from the hopelessly inadequate current arrangements, rightly condemned by staff, management and the experts of the Redesign Panel alike.

21. **Ms. Galer** (Officer-in-Charge, Office of the United Nations Ombudsman), introducing the report of the Secretary-General on the activities of the Ombudsman (A/62/311), established in response to the request of the General Assembly in paragraph 22 of its resolution 59/283 on administration of justice at the United Nations, said that the document in question provided an overview of the first five years of operation of the Office of the Ombudsman, covering the period from 1 September 2006 to 31 July 2007.

22. The establishment of the Office in 2002 had provided a dedicated mechanism for the informal resolution of employment-related conflicts. Within the terms of its mandate, the Office also made recommendations for changes in policy or practice where a particular dispute or set of issues reflected a systemic problem fostering conflict or dissatisfaction in the workplace. Through constant outreach and field visits, staff worldwide had been made aware of the existence of the new mechanism and of its scope of operation.

23. The Office had conducted expert reviews of its operations in the field of alternative dispute resolution, in December 2003, in December 2005 and most recently in May 2007. Lessons learned had been incorporated into the operations of the Office, as resource constraints permitted. The section of the report devoted to monitoring of performance and assessment of impact fully detailed the aims and findings of the panel of external conflict-resolution experts recruited in May 2007 to conduct the five-year evaluation of the Office. Amongst other things, the panel had noted the need for the Office to be adequately resourced; observed the increasing complexity of the cases addressed to the Office; advocated for the promotion of a better understanding of the role of the Ombudsman; and commended the cooperation of senior managers with the Ombudsman.

24. Between its inception in 2002 and 31 July 2007, the Office had taken up a total of 2,664 cases. It estimated that more than two thirds of the cases amenable to informal resolution had reached solutions agreeable to all parties. During the reporting period, 39 per cent of the staff seeking the assistance of the Ombudsman had been from offices away from Headquarters; 35 per cent from field missions and 26 per cent from Headquarters (as against 60 per cent from Headquarters in 2002). The Redesign Panel had issued recommendations designed to make the Office more effective in resolving conflicts by such means as binding mediation agreements. The establishment of regional branches in other duty stations would improve access to the services of the Office and strengthen its ability to respond swiftly to problems, especially where time-sensitive matters were involved. Presence in the field would also enable the Office to play a more effective role in identifying systemic problems and provide early warning to local management about festering issues.

25. The ongoing monitoring of systemic dysfunctions, an important feature of the Office's operations, had required constant dialogue with both staff and management. Much progress had been made in implementing many of the key proposals and recommendations in the Office's previous annual reports, including those regarding mission readiness; enforcement of the zero-tolerance policy; a review of the various types of contractual arrangement; expanded orientation for new staff members, and enhanced leadership and managerial training. Other systemic issues and challenges included the need for better use of the performance appraisal system and mobility and career development, particularly for staff recruited through the national competitive examination. Special attention must be paid to improving facilities and mechanisms to provide medium- and long-term support to staff who had experienced trauma while in the service of the Organization.

26. Externally, the Office played an active part in the activities of the network of ombudsmen and mediators of the United Nations system and Bretton Woods institutions that served 21 different institutions. Meetings of the network provided opportunities to arrange exchanges of staff, share best practices and strengthen inter-agency cooperation, particularly in the context of integration of the Office of the Ombudsman with its counterparts in the funds and programmes.

27. In its initial five years of operation, the Office of the Ombudsman had devoted time to establishing and consolidating itself. The next five-year phase would be even more crucial for the success of the system of justice. Under the leadership of the new Ombudsman, who would be selected through an inclusive process involving both management and staff, the Office should further expand its reach, in order to respond in a timely manner to increasing demands, with a truly horizontal, zero-barrier approach. Independence, neutrality, confidentiality and, above all, excellence of delivery must be maintained, and standard operating procedures and clear reporting lines should be established. The proposed Mediation Division would increase the capacity for conflict resolution, allow better conditions of service and improve the environment in the workplace. The General Assembly would play a key role in the success of the system, by providing guidance for strengthening the existing mechanism and by endowing it with sufficient resources to allow it to perform in the best interests of all.

28. **Mr. Saha** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related reports of the Advisory Committee (A/61/936 and A/62/7/Add.7), said that Part II of the eighth report of the Advisory Committee on the proposed programme budget for the biennium 2008-2009 (A/62/7/Add.7) addressed the requirements relating to posts for 2008-2009 as a whole, including those set out in documents A/61/891 and A/62/294. Part III of the report contained the revised estimates for the calendar year 2008 for non-post resources.

29. The Secretary-General had proposed a total of 133 posts for the new system, including 35 existing posts, 11 new posts to be created immediately and 68 new posts to be established on 1 January 2009 when the new system came into effect. The Advisory Committee understood that the proposed requirements were based partly on current caseload and the general assumption that recourse to the system would increase as the staff's confidence in the system grew.

30. There was some uncertainty regarding the prospective workload under the new system, and it was difficult to evaluate how the development of one part of the new system might affect another. For example, any strengthening of the informal system might reasonably be expected to reduce recourse to the formal system. Furthermore, the two-tiered formal

system was being envisaged without the benefit of any real experience in a comparable setting. The Advisory Committee was of the view that such an elaborate and complex system should be implemented in a prudent and gradual manner which gave effect to the principles expressed by the General Assembly while permitting further development in the light of experience.

31. The Secretary-General's proposal to cover non-staff personnel would expand the scope of the coverage by some 45,000 persons or 75 per cent. The Committee continued to believe that there was no sound basis for granting access to the internal justice system of the United Nations to individual contractors, consultants and United Nations Volunteers who had existing means of recourse. However, it recognized the Organization's responsibility to ensure that the daily paid workers in peacekeeping missions (3,312 individuals as of September 2007) were made aware of their rights and obligations and had access to suitable recourse procedures within the framework of the United Nations.

32. Recognizing that the informal system constituted an important element of the reform of the system of internal justice, the Advisory Committee recommended that the Mediation Division should be established from 1 January 2008 and consist of four posts. With its strengthened role, the Office of the Ombudsman should be able to promote the informal resolution of disputes, thereby avoiding unnecessary litigation. The Committee's recommendations concerning the Office of the Ombudsman were contained in paragraphs 22, 26 and 27 of its report (A/62/7/Add.7). In general, they reflected the view that it was not necessary to establish branch offices for the Offices of the Ombudsman in each of the eight duty stations proposed and that the presence of personnel from the Office of Staff Legal Assistance in some duty stations would also provide knowledgeable capacity that staff could draw upon.

33. The Secretary-General's proposal to introduce a formal, mandatory management evaluation function, with the establishment of a large structure dedicated for that purpose might only add costs and delays to the process. The general principle of exhausting administrative remedies before proceeding to litigation could be honoured through an informal process. The Committee therefore recommended that the posts proposed to be redeployed to the Management Evaluation Unit should be dedicated to performing management evaluation activities, as required.

34. Concerning the Secretary-General's proposals for the Office of Administration of Justice, the Committee recommended that the post of Executive Director should be approved at the D-2 level rather than the Assistant Secretary-General level. As for the Office of Staff Legal Assistance, the Committee's approach was to provide legal assistance capacity in some duty stations and Ombudsman capacity in others. Its recommendations concerning individual posts in the Office of Administration of Justice were outlined in paragraphs 38, 39 and 48 of its report.

35. Regarding the Secretary-General's proposal that a panel of three judges should decide cases at the Dispute Tribunal, the Committee continued to believe that the Redesign Panel's proposal for a single judge with some elements of peer review provided sufficient safeguards to ensure that the law was properly applied.

36. Lastly, with respect to disciplinary matters, it appeared that conditions were not yet ripe to implement the limited delegation of authority envisaged by the Secretary-General or for the General Assembly to take a fully informed decision. The Advisory Committee recommended that the Secretary-General should be requested to submit a more detailed proposal regarding delegation of authority on disciplinary matters for the consideration of the General Assembly at the second part of its resumed sixty-second session.

37. **Mr. Kisambira** (President of the New York Staff Union) said that the commission of experts established by the Staff Union had identified the proposed Internal Justice Council as the lynchpin of the new system of administration of justice. Although the Redesign Panel agreed with the commission's view, it had not described the Council in sufficient detail for readers to fully appreciate the crucial role envisaged for that body. The Staff Union was also concerned that no budgetary provision appeared to have been made for the Council's establishment.

38. The Council would be comprised of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, and it would be chaired by another distinguished external jurist appointed by the Secretary-General after consultation with the other four members. Such a membership would ensure that both staff and management perceived the Council as an

independent body which was aware of their concerns and was able to deal with United Nations judges.

39. The Council's role would include, inter alia, recruitment (drawing up job descriptions for the full-time judges of both tiers and recommending two or three candidates for appointment to each position); providing advice on the drafting of the statutes for the two Tribunals and preparing the initial rules of procedure and evidence; addressing allegations of judicial incapacity or misbehaviour; submitting an annual report to the General Assembly on the Council's performance; mediating between the Secretary-General and the judges on terms of payment, conditions and available resources; and drafting employment contracts that ensured judicial independence.

40. The system of administration could not function until the Council had been funded and put in place. Since most candidate judges would need to clear a backlog of cases before taking up their United Nations positions in January 2009, the Council would have to be established in early 2008. The Committee might wish to consider inviting members of the Redesign Panel to help set up the Council, as they knew the system and had performed their tasks with distinction.

41. It was up to the Council, not the Secretary-General or the Office for the Administration of Justice, to ensure that the Redesign Panel's vision was respected and that the new system complied with basic standards of fairness and independence.

42. The Staff Union welcomed the proposal to establish a professional Office of Staff Legal Assistance but noted that the proposed staffing was not commensurate with that of the offices representing the administration. In accordance with the principle of "equality of arms", it was important that each party should be given a reasonable opportunity to present its case under conditions that did not place it at a disadvantage.

43. Concerning the establishment of a professionalized Office of Counsel within the proposed Office of Administration of Justice, the Staff Union urged the Committee to consider expediting the establishment of the former so that it would become operational at the same time as the Office of Administration of Justice. The Committee might consider recommending the appointment of two full-time judges, one for the Joint Appeals Boards and one for the Joint Disciplinary Committees, for a one-year non-renewable term, to deal with cases until the new system was operational. The two full-time judges could be assisted by a dedicated pool of staff members, who would receive intensive training and would be given time off to help deal with new cases and reduce backlog. Again, the Committee might consider recommending that members of the Redesign Panel should be appointed as judges of the Joint Appeals Boards and the Joint Disciplinary Committees.

44. While the Staff Union's non-participation in SMCC might be relevant to the current discussion, the Administration had done little to address the issues that precluded the Staff Union's renewed participation in that body.

45. **Mr. Hussain** (Pakistan), speaking on behalf of the Group of 77 and China, said that the Group supported all measures that would help the United Nations attract and retain highly qualified staff. An independent, professionalized, decentralized and adequately resourced system of administration of justice would enable the Organization to properly address employment and contractual issues and would help staff seek a fair resolution of disputes, thereby ensuring due process. The Group considered that General Assembly resolution 61/261 provided a clear road map for the new system and stressed that the distribution of resources among all duty stations must be equitable.

46. The Group welcomed the Secretary-General's report and urged that General Assembly resolution 61/261 should be fully implemented during the current session. However, concerning the Secretary-General's intention to expand the scope of the new system by some 45,000 persons, it considered that the system should be stabilized and strengthened first.

47. A well-resourced, decentralized, professionally managed informal system of justice with a strong, structured Mediation Division should be able to solve the majority of problems rapidly and cost-efficiently. The Group supported the policy of equity in establishing the related posts at all duty stations and noted the Secretary-General's proposal to outpost staff of the Office of the Ombudsman to certain peacekeeping missions.

48. The Group agreed that a strengthened informal system would alleviate the burden on the formal system. It also noted that the Secretary-General had proposed the development of a management evaluation

function as part of the formal system. While management evaluation was an important tool, it needed to be implemented within a strict time frame and the current resources available for such evaluation needed to be used efficiently. The Group agreed with the Advisory Committee that management evaluation should be completed as soon as possible, but within a limit of a maximum of 30 days. If a case was not resolved by the end of 30 days, it should be automatically referred to the Dispute Tribunal. On the other hand, staff should not have to file a request for management evaluation within 60 days after notification of a contested administrative decision.

49. A first-instance dispute tribunal would constitute a great improvement over the old system. Considering the nature of its work, the tribunal should be in a position to convene and render decisions as soon as possible. It was also important to decide on the number of judges.

50. The Group supported the establishment of the Internal Justice Council, which should carefully screen all applicants and make suitable recommendations to the Secretary-General. The General Assembly, however, should continue to make the final appointment of all United Nations tribunal judges. In order to attract highly-qualified legal practitioners, the Organization must offer excellent remuneration.

51. In the spirit of General Assembly resolution 61/261, the General Assembly should rectify the inadequacies of the Panel of Counsel. Given its critical role, the proposed Office of Staff Legal Assistance should be staffed with professional legal experts who could provide sound guidance to distressed staff members.

52. The implementation of the new system needed to be carefully monitored. In that context, the Office of Administration of Justice should be headed by a senior-level staff member who participated in coordination meetings and decision-making on policy. The Group had inferred from the relevant paragraph in General Assembly resolution 61/261 that the Office would be headed by at least an Assistant Secretary-General and intended to pursue that objective during negotiations on the item.

53. The Group remained committed to the establishment of a fully functional system of justice by January 2009, as envisaged by the General Assembly, and it supported the Secretary-General's proposals regarding transitional measures to help clear the backlog in the current system. It recalled that those proposals had been endorsed by SMCC.

54. It was essential that the confidentiality of parties involved in disputes should be protected. Management should therefore establish appropriate mechanisms to address leaks and any ensuing negative fallout. It was particularly important to protect staff members' reputations when they had been falsely accused.

55. **Mr. Ramos** (Portugal), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Georgia, Iceland, Moldova and Ukraine, said that the European Union attached great importance to the establishment and full implementation of a new system of administration of justice, as provided for in General Assembly resolution 61/261.

56. The European Union agreed with the Redesign Panel and the Secretary-General that the United Nations needed an internal justice system that enjoyed the trust and confidence of both staff and management. The system should therefore be professionalized and should conform with the relevant principles of international law, rule of law and due process, including equal access to justice and the right to be heard. The judges of both tiers of litigation should be highly qualified impartial professionals of recognized judicial standing and should serve strictly in their personal capacity, while enjoying full independence. The Organization must develop a system of selection and nomination which ensured that the judges' professional qualifications met the requirements of their tasks.

57. The informal system of justice should be structured to deal with as many grievances as possible. The ombudsmen could play an important role in reporting on broad systemic issues and encouraging staff to seek resolution through the informal system. It was also important to have a single integrated and decentralized Office of the Ombudsman. Further discussion was needed to clarify how the informal system linked to the formal system.

58. To be effective, the new system should be set up within a workable time frame. Once established, the system should be reviewed in the short to medium term

to assess its effectiveness and, particularly, its ownership by both staff and management.

59. The Committee would have to address crucial questions on financing and staffing the new system. Given that the desired measures might not prove to be financially feasible, it must endeavour to find the right balance. The European Union would make every effort to assist the Organization in building a fair, strong and efficient system of administration of justice for the United Nations of the twenty-first century.

60. In paragraph 83 of its report (A/62/7/Add.7), the Advisory Committee had requested that the resource requirements should be adjusted to take into account its recommendations and that the adjusted resource requirements should be provided separately to the Assembly during its consideration of that report. As that procedure departed slightly from the established one, the European Union would like to know whether the Chairman intended to provide the financial implications of the Advisory Committee's recommendations in a formal meeting or during the informal consultations.

61. **Mr. Hill** (Australia), speaking also on behalf of Canada and New Zealand, said that United Nations staff members should have access to a fair and efficient system of internal justice that was transparent, impartial and consistent with the principles of the rule of law and due process. A properly functioning system of internal justice underpinned all efforts to strengthen accountability, oversight and human resources management.

62. He was concerned, however, about the immense cost of the Secretary-General's proposals, which had been estimated at over $58 million per biennium. Accordingly, he agreed with the Advisory Committee that the new system should be implemented in a more prudent manner, with the opportunity to learn from experience over time. Strengthening the informal system, and in particular the creation of the mediation function, should reduce the need for the formal system in future. Australia, Canada and New Zealand would carefully consider the Advisory Committee's cost-cutting recommendations with a view to ensuring the provision of sufficient resources to guarantee the proper functioning of the new system.

63. The cost-sharing arrangements referred to in the Secretary-General's report were an important element of the funding of the new system, since one third of the staff covered by that system were employed by entities other than the Secretariat and peacekeeping missions. He would be grateful for an update on the status of those arrangements.

64. The Secretary-General's report also contained details of proposed new disciplinary proceedings. In that connection, the delegation of authority to heads of offices away from Headquarters should help to eliminate many of the delays that hampered the functioning of the current system. It was important to develop adequate guidelines for the imposition of sanctions to ensure consistency across the board.

65. Lastly, the success of the new system would depend on its ability to engender trust among both staff and management. It was therefore vital to implement it as scheduled. If the new system was to be up and running by the start of 2009, certain decisions must be taken at the current session and, to that end, he stood ready to work constructively with all concerned.

66. **Mr. Fermín** (Dominican Republic), speaking on behalf of the Rio Group, said that the Rio Group supported all initiatives designed to improve the conditions of service of staff, in particular the establishment of a professional, fair, independent and effective system of administration of justice. It therefore welcomed the recommendations of the Resign Panel, which had served as the basis for the decisions taken at the sixty-first session. The Group had also taken note of the relevant reports of the Secretary-General and the Advisory Committee, although it would be grateful for additional information on a number of the observations and recommendations set out in the latter.

67. The Rio Group agreed with the Secretary-General that the informal system was a crucial element of the new arrangements. Resolving conflicts informally would enhance efficiency and avoid unnecessary litigation. The Secretary-General's proposal for a single, integrated and decentralized Office of the Ombudsman for the Secretariat, funds and programmes would ensure that all staff, both at Headquarters and in the field, had access to the informal system. The Rio Group also supported the resources proposed for the new Mediation Division, which would strengthen the capacity of the Office of the Ombudsman to resolve conflicts at the informal level. However, it expressed concern about the Advisory Committee's recommendation that the Secretary-General's original

proposals, as set out in the report of the Redesign Panel, should be downsized. The proposed reduction in the number of decentralized branch offices of the Office of the Ombudsman was particularly troubling.

68. With regard to the formal system, it was essential to strengthen the management evaluation function in order to ensure that the Administration had the opportunity to review or overturn decisions prior to their being brought before the Dispute Tribunal. It was important to exhaust administrative remedies before commencing formal proceedings. In addition, strengthening accountability mechanisms would have a positive effect on the management of the Secretariat. A decision on that issue should therefore be taken as soon as possible. As far as the time limits were concerned, the reduction proposed by the Advisory Committee must be offset by the allocation of adequate resources to ensure that the Administration could comply with the new limits.

69. The Organization must also improve the legal assistance available to staff by reforming the current arrangements. Such a reform would also offer the opportunity to strengthen accountability mechanisms and ensure that both staff and management were held accountable for their acts and decisions. In principle, therefore, the Rio Group supported allocating resources to strengthen the Office of Staff Legal Assistance in order to guarantee access to justice for all staff members.

70. The costs of the new system should be shared between peacekeeping operations, the funds and programmes and the Secretariat, and cost-sharing arrangements should be agreed upon by participating organizations. In that connection, the Rio Group hoped that the new system would be funded transparently and in such a way as to ensure that all participating organizations had fair and equitable access to justice.

71. Since it agreed with the Advisory Committee that the establishment of two separate registries (for the Dispute and Appeals Tribunals) would create duplicative structures, the Rio Group supported the establishment of a single, consolidated registry. It also took the view that, once the new system was operational, the Office of Administration of Justice would play a vital role in guaranteeing institutional independence and autonomy.

72. **Mr. Bichet** (Switzerland) said that both as a Member State and as a host State Switzerland endorsed the General Assembly's plan to put in place a new system for the administration of justice, especially as the present system did not guarantee persons working for the United Nations an effective appeals procedure or due process. Despite the substantial financial implications of the reform proposed by the Secretary-General, Switzerland would not support any measures to limit those implications which would endanger minimum standards of justice and the principles fixed by the General Assembly. The new system must be decentralized, for the main objective was to enable all employees of the Organization, regardless of their contractual connection or place of duty, to present their case and enjoy due process. The informal system must have sufficient personnel to resolve as many disputes as possible before recourse was had to the formal system, which in turn must have sufficient resources to ensure fair and effective justice. That meant creating a jurisdiction of first instance and an appeals jurisdiction.

73. His delegation disagreed with the Advisory Committee on two points: firstly, concerning the scope of persons covered by the new system, which should be as broad as possible; secondly, concerning the registries, since, if, as the Advisory Committee recommended, only one registry was created for the two tribunals, applications in first and second instance must be dealt with by different persons in order to guarantee the Appeals Tribunal sufficient independence.

74. **Mr. Hoe** Yeen Teck (Singapore) said that any organization must have a good system of governance and accountability, but in the United Nations the management always had the upper hand over the staff in disciplinary cases. The Administrative Tribunal had noted repeatedly in its judgements that staff members had been denied due process, and the Secretary-General could choose to disregard the findings of the judicial bodies, one of which had even described the Organization's investigation procedures as contravening international human rights standards. The report of the Redesign Panel pointed the way to what appeared on paper to be a fairer and more accountable system, but the new system must be made so in practice if it was to gain people's trust. Ten points must be borne in mind in that connection.

75. First, the Redesign Panel's recommendation that the tribunals' decisions should be binding on the Administration would correct a serious flaw in the

present system. Second, since all the judges must be seen to be impartial, the judges of the Disputes Tribunal should be appointed not by the Secretary-General but by the General Assembly, from a short-list compiled by the Internal Justice Council on the basis of competence and equitable geographical distribution. Third, the Redesign Panel's recommendation that the appraisal of judges should be entrusted to the Council would forestall any doubts as to the Secretariat's impartiality in that regard. Fourth, the Secretary-General's proposals for strengthening the informal justice system, including the establishment of the Mediation Division and the possibility for the Disputes Tribunal to refer cases for mediation, warranted support. Fifth, since the Secretary-General's report did not contain any concrete proposals on whistle-blowing, it was not clear how staff members would raise complaints against their supervisors or find protection from revenge attacks; the Organization needed to be able to discipline both errant staff and abusive managers. Sixth, following its incorporation into the Office of Staff Legal Assistance the Panel of Counsel must be equipped with sufficient personnel and other resources to deal with complaints from all duty stations. Seventh, support should be given to the Secretary-General's proposal for the allocation of increased resources to enable the Administrative Tribunal to clear its backlog of cases before the transition to the new system. Eighth, the proposal on management evaluation had some merit, but nobody used the existing arrangements for administrative review because they were seen to constitute a delaying tactic by management and to involve a conflict of interest. It would therefore be a good idea to locate the new arrangements in a neutral body, such as the Office of Administration of Justice, and not in the Department of Management. Ninth, the revised version of the Investigation Manual of the Office of Internal Oversight Services (OIOS) and the standard operating procedures for non-OIOS investigations which the Secretariat was preparing must be made available for scrutiny by staff members and the Member States before the new system came into effect. Finally, the Secretary-General's report did not mention the question of handling publicity: most of the media leaks seemed to concern allegations against staff members, but the Secretariat was conspicuously silent when such allegations proved unfounded.

76. The proposals before the Committee offered an opportunity fundamentally to improve the administration of justice, but time must be taken to get the new system right. Although the system appeared costly, improvement of the Secretariat's efficiency and effectiveness would reduce hidden costs that were due to low morale, inefficiency, managerial abuse and unjustified payouts.

77. **Mr. Muhith** (Bangladesh) said that General Assembly resolution 61/261 provided comprehensive guidelines for the reform of the administration of justice, without which the effective reform of human resources management was impossible. His delegation was encouraged by the momentum gained so far but shared the Advisory Committee's concern that the establishment of such a complex system was being envisaged without the benefit of any real experience in a comparable setting. Since it was fundamental for the administration of justice to enjoy the trust of both the staff and the management, his delegation was delighted that the Secretary-General had sought to reflect in his report a united position based on the collective agreement of the staff and management and the funds and programmes.

78. His delegation was expecting detailed information on education and training and subsequent monitoring and evaluation, for they would be essential to the success of the new system. The ever-increasing number of cases submitted to the Office of the Ombudsman since its establishment in 2002 testified to the need for the Office as a catalyst for change. His delegation was concerned about the failure to address some of the systemic issues identified by the Office: the staff selection and recruitment procedures, which could engender severe dissatisfaction; the inadequate integration of two major objectives of the mobility programme — development of a multi-skilled and versatile staff, and provision of varied career opportunities; and the current contractual arrangements, which were a major source of discontent. Another source of concern was the administration of justice in peacekeeping missions, which had received inadequate attention in the reports.

79. **Mr. Torres Lepori** (Argentina) said that his delegation, which had always stressed the need for a sound and transparent system for the administration of justice, felt that the Redesign Panel's recommendations provided a concrete foundation for improving the current system. The Committee must now decide how to put a reformed system in place by January 2009. The increased resources necessarily required for

implementation of the Secretary-General's proposals were fully justified by the need to ensure that staff members felt confident that their grievances would be dealt with in a supportive and just manner.

80. His delegation was in favour of the informal component of the new system and its decentralization, including the introduction of specific arrangements for Latin America. In the case of the formal component, the Administration must have the resources to respond to claims made by the staff within the time frame set by the General Assembly. The Office of Administration of Justice was also needed in order to manage the enormous changes proposed. Since the Office of Staff Legal Assistance would carry out important functions of guidance and facilitation, the Advisory Committee's comments on the Secretary-General's proposal would have to be examined closely to determine how they would affect those functions. The Secretary-General's proposal for the creation of two judicial instances, the Disputes Tribunal and the Appeals Tribunal, also required further discussion. His delegation awaited with interest further information on the scope of persons covered by the new system and on the outcome of the discussion in the Sixth Committee on various legal aspects of the proposed reform. The Fifth Committee would also have to agree at the present session on transitional measures to clear professionally and expeditiously the backlog of cases in the existing system.

81. **Mr. Kovalenko** (Russian Federation) said that the Russian Federation regarded the reform of the system for the administration of justice as a vital step in the direction of strengthening the rule of law in the United Nations. His delegation hoped that it would be possible for the Committee to take account of the discussion in the Sixth Committee of some of the aspects of the issue. The General Assembly had given its support so far only to the concept of creating a new system, consisting of formal and informal parts; the details remained to be determined. His delegation was in favour of creating a two-tier system consisting of two tribunals but advocated the discontinuation of the present consultative bodies. It could not understand why the Disputes Tribunal would retain the practice of the Administrative Tribunal of collaborating with other organizations of the United Nations system on the basis of special agreements. Why should such organizations not have access to the two-tier system in the normal way?

82. A key criterion for determining the scope of persons covered by the new system should be the lack of other means of legal protection. Coverage should extend to United Nations employees not members of the Secretariat and to experts on mission, but caution should be exercised with regard to the inclusion of individual contractors, who might have access to arbitration procedures and whose work in any event presupposed commercial risk.

83. The jurisdiction of the new system ought to include disputes arising from failure by the Organization to discharge its obligations towards persons covered by the system and not just from non-compliance with the terms of appointment. Once again, the criterion of lack of other means of legal protection came into play. In order to ensure impartiality and independence, the appointment and removal of judges of both tribunals should be a matter for the General Assembly alone: to entrust that responsibility to the Secretary-General might lead to a conflict of interest, for the tribunals would be reviewing decisions of the Secretary-General himself or of his subordinates. The question whether cases should be heard in the Disputes Tribunal by one or by three judges required further consideration.

84. With regard to the informal system, his delegation generally supported the Secretary-General's proposals for strengthening the ombudsman arrangements and on the Mediation Division and the demarcation of the formal and informal systems. It also supported the proposals on the provision of legal assistance, for the lack of such provision under the existing arrangements when there was a need for the services of professional lawyers placed complainants in a vulnerable position and violated the principle of "equality of arms".

85. It was important to retain the possibility of management evaluation of disputed decisions which might lead to judicial proceedings, but such evaluations must be made expeditiously. The proposals on disciplinary proceedings warranted support, in particular the right of the staff members concerned to respond to the charges. As to the division of responsibility for investigations, OIOS should continue to investigate only category 1 offences; persons under investigation by the Office must also be allowed to respond to the charges, and they and their managers should receive a final report on its findings. The revised OIOS Investigation Manual and the standard

operating procedures for non-OIOS investigations must be submitted to the General Assembly in a report by the Secretary-General.

86. His delegation did not support the proposal to assign investigatory functions to the Department of Safety and Security. The proposal on the funding of the new system of internal justice had substantial financial implications; the system should be rendered less costly.

87. **Mr. Kishimoto** (Japan) said that, in accordance with General Assembly resolution 61/261, the new system of administration of justice should have a positive impact on staff-management relations and improve the performance of both staff and managers. Furthermore, in order to ensure the effectiveness and feasibility of the new system, a radical overhaul of the current system and workplace culture would be required. It was clear from the Ombudsman's experiences that informal conflict resolution procedures would be crucial to the success of the new system, and maximum use should be made of those procedures in order to avoid unnecessary litigation.

88. Nevertheless, it would be impossible to create a fair and reliable administrative order unless the systemic problems affecting human resources were resolved. Over the past five years, promotion- or career-related issues had accounted for the largest number of complaints submitted to the Office of the Ombudsman by staff members, and it was apparent that the current staff selection system and the substantial delegation of authority to programme managers were the root causes of those problems. He would be interested to know whether the Secretary-General had taken or planned to take any steps to rectify that situation.

89. Turning specifically to the Secretary-General's proposals, he said that the number of posts and their respective grades far exceeded the actual requirements. Accordingly, and given the uncertain volume of cases to be dealt with by the new informal and formal mechanisms, regional outreach activities should, for the time being, be carried out by means of electronic communication and field visits. The system should be implemented in a prudent and gradual manner, and adjustments to the staffing table should be considered at a later stage following a review of the effectiveness of the new arrangements.

90. The proposed activities of the Office of Staff Legal Assistance overlapped significantly with those carried out by the Office of the Ombudsman, and neither Office would have a formal system for the provision of legal assistance to staff members. The new arrangements could deprive staff members of their autonomy and create undesirable conflicts of interest. A variety of alternative options designed to meet staff needs should therefore be discussed.

91. Consideration of whether to broaden the scope of the new system to cover non-staff personnel should be deferred to a later date. In addition, and consistent with the desire to limit recourse to the formal system to a minimum, the management evaluation process should begin with informal conflict resolution. In that connection, he was afraid that establishing a dedicated management evaluation unit would diminish accountability by blurring managerial responsibility.

92. It was unrealistic to expect that the backlog of pending cases would be cleared before the new system became operational. The Secretariat should provide justification for the additional resources requested in that regard, and the feasibility and effectiveness of convening an additional session of the United Nations Administrative Tribunal should be evaluated.

93. Lastly, since the system of administration of justice was funded not only from the regular and peacekeeping budgets but also from extrabudgetary resources, any cost-sharing arrangement should reflect that situation. Accordingly, if the majority of users in some duty stations occupied posts funded from extrabudgetary resources, the associated costs should be borne mainly by those who had contributed those resources. He would like to study the relevant data with a view to proposing a cost-sharing arrangement that better reflected the beneficiary payment principle.

94. **Mr. Scanlon** (United States of America) expressed his full support for the Secretary-General's intention to establish a new system of internal justice. The relevant reform measures recommended by the Fifth Committee should reflect broad consensus and be fair to both staff and management.

95. In principle, he was in favour of the proposed structural changes to the Office of the Ombudsman. Provided that certain parameters were maintained, those changes, coupled with appropriate support from the Office of Staff Legal Assistance, would help to create a more efficient and cost-effective informal system. Reform efforts should result in a system where

the majority of workplace issues could be resolved without the need for formal litigation.

96. He was, however, concerned about the financial implications of the new system, taking the view that the actual costs were likely to be significantly higher than the Secretary-General's estimates. While the success of the new system was dependent on an approach that provided for the implementation of all proposed elements, those elements did not all have to be implemented to the same degree. Accordingly, the approach selected should emphasize informal mediation, involve both professional and volunteer staff and address the needs of current staff before extending benefits to non-staff personnel. In that connection, he agreed with the Advisory Committee that there was no sound basis for granting access to the internal justice system to individual contractors, consultants and United Nations Volunteers, who had existing means of recourse. Before the Fifth Committee considered extending access to non-staff, the Secretary-General should provide some alternative suggestions on how to improve the dispute settlement procedures currently available to them. Furthermore, he did not deem it necessary to broaden the scope of the system to allow staff associations to file the equivalent of class-action suits. The latter had the potential to delay the expeditious resolution of individual claims and overload the system.

97. While he was prepared to support the proposed expansion of the Office of the Ombudsman, he agreed with the Advisory Committee that the expansion should be phased, with initial increases in New York, Geneva, Nairobi, the Democratic Republic of the Congo and the Sudan. Any future expansion should be contingent on ability to manage the caseload.

98. He did not agree with all elements of the proposal to create an Office of Staff Legal Assistance, taking the view that not all the posts requested were necessary. Furthermore, legal professionals attached to the Office should not serve as counsel of record. While the current regime for providing legal assistance to staff could be strengthened, such assistance should not include advocacy in specific cases. Instead, the Secretary-General should explore other options for improving staff access to legal representation.

99. Administrative review was an important element of the informal conflict resolution process. However, he was not convinced of the need for a management evaluation unit, taking the view that the current system should be improved, not replaced. In that regard, he endorsed the Advisory Committee's recommendation that the current administrative review process should be retained while the applicable time limits should be shortened and their enforcement ensured.

100. Lastly, while supporting the creation of a two-tier formal system, he did not agree with several aspects of the Secretary-General's proposals. First, consistent with widespread national practice, one judge, rather than three, should suffice for the Dispute Tribunal. At the present stage, the Dispute Tribunal should have one judge in New York, Geneva and Nairobi, with more judges added where necessary. In addition, appeals judges should be convened on an ad hoc basis rather than be required to sit on full-time, standing tribunals. Selection processes must be impartial and transparent and produce the requisite number of highly qualified and experienced judges. He therefore looked forward to discussing the make-up of the proposed Internal Justice Council.

101. **Mr. Al-Sadah** (Qatar) said that, as one of its major objectives was to support the administration of justice and the rule of law worldwide, the United Nations should serve as a role model in that regard. Its internal justice system should be independent, transparent, professional, adequately funded and decentralized in order to ensure that justice and due process were available to staff members, especially as they had no legal recourse to national courts to resolve work-related grievances.

102. The necessary attention should be given by the Committee and the General Assembly to the proposals of the Secretary-General on the allocation of the required resources, in both the proposed programme budget for the biennium 2008-2009 and the support account for peacekeeping operations for the period from 1 January to 30 June 2009, with the objective of fully establishing the new system prior to the due date of implementation on 1 January 2009.

103. The proposal to establish the Internal Justice Council to compile lists of qualified persons for appointment to judicial posts was useful. It should be emphasized that the General Assembly must remain the competent organ to appoint the judges and that the remuneration of judges should be adequate, in order to attract the best candidates. The proposal on the selection and appointment of judges was also useful.

104. The informal system could play a constructive and useful role within the larger justice administration system and would contribute to reducing costs, time and effort. Therefore, sufficient resources were needed for the informal system and for strengthening the role of mediation and the Office of the Ombudsman.

105. While the Office of the Ombudsman could also play a role in peacekeeping operations, specific standards for the establishment of branch offices and more detailed information and further clarification was needed. Management evaluation could reduce the volume of complaints but should be within specific time limits and make effective use of available resources.

106. **Ms. Bárcena** (Under-Secretary-General for Management) reiterated that the provisions of General Assembly resolution 61/261, taken together with the most recent report of the Secretary-General, provided a good basis for the Fifth Committee's consideration of the reform of the system of administration of justice.

107. Referring to the scope of the new system, she said that the estimates in the Secretary-General's report did not cover non-staff personnel because it was impossible to predict how many such personnel would have recourse to the system. Cost-sharing arrangements would be particularly important because the current estimates did not include coverage for a significant proportion of staff employed by the funds and programmes and peacekeeping missions. While acknowledging that the proposals were costly and agreeing that the new system should be introduced gradually, she stressed the need to avoid a piecemeal approach.

108. There seemed to be some confusion over the respective roles of the Panel of Counsel, the Office of the Ombudsman and the Office of Staff Legal Assistance. In that connection, the Secretary-General took the view that the Ombudsman should have a neutral function and be able to act on behalf of both staff and management. The Office of Staff Legal Assistance, on the other hand, was intended solely to assist staff. Lastly, in response to the remarks made by the representative of Singapore, she said that the Panel on Discrimination and Other Grievances would be incorporated into the Office of the Ombudsman, not the Panel of Counsel, which would itself become part of the Office of Staff Legal Assistance. Ensuring that each office or department had separate and distinct mandates would contribute to strengthening transparency and accountability.

109. **Mr. Saha** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that, from a technical perspective, it had been rather difficult to prepare the report at issue. He took the view, however, that the Advisory Committee had succeeded in its efforts to produce a focused and reader-friendly document. The report represented the considered opinion of the Advisory Committee and had been issued as a consensus text.

The meeting rose at 12.50 p.m.